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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

OFFICE OF THE  
ADMINISTRATIVE JUDGES

**SERVED MAR 21 2000**

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel  
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

March 21, 2000

MEMORANDUM AND ORDER  
(Denying Request for Admission  
of Late-Filed Bases  
for Contention Utah S)

With its pending January 26, 2000 motion, intervenor State of Utah (State) seeks to add two so-called late-filed bases to its admitted contention Utah S, Decommissioning. Specifically, the State wishes to litigate the issue of the timing of the payment of escrowed funds to cover the estimated costs of decommissioning the individual storage casks that will be stored at the proposed 10 C.F.R. Part 72 Skull Valley, Utah independent spent fuel storage installation (ISFSI) of applicant Private Fuel Storage, L.L.C. (PFS). PFS opposes both issues as failing to meet the 10 C.F.R. § 2.714(a)(1) test for late-filed admission and the additional section 2.714(b), (d) standards governing the substantive showing required to admit contentions. The

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NRC staff, on the other hand, claiming that only the second new issue does not meet section 2.714(a)(1) late-filing standards, objects to the admission of both items under the contention admissibility requirements of section 2.714(b), (d).

For the foregoing reasons, we deny the State's late-filed contention Utah S admission request.

#### I. BACKGROUND

Contention Utah S was among a number of State issues we accepted into this proceeding in our April 1998 order granting intervention and admitting issues. In pertinent part it provides:

The decommissioning plan does not contain sufficient information to provide reasonable assurance that the decontamination or decommissioning of the ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public as required by 10 C.F.R. § 72.30(a), nor does the decommissioning funding plan contain sufficient information to provide reasonable assurance that the necessary funds will be available to decommission the facility, as required by 10 C.F.R. § 72.22(e).

LBP-98-7, 47 NRC 142, 255, reconsideration granted in part and denied in part on other grounds, LBP-98-10, 47 NRC 288,

aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998).<sup>1</sup> With its January 26, 2000 late-filed admission motion, the State now seeks to add two additional issue statements, which it numbers twelve and thirteen, relative to contention Utah S. These provide:

Basis 12: The Staff's proposed acceptance ([Safety Evaluation Report] at 17-5, -6) of the Applicant's proposal to require payment of decommissioning costs at the time a cask is accepted for storage rather than before the start of operations is in violation of the requirements of 10 CFR § 72.30(c)(1).

Basis 13: The Staff's proposed acceptance ([Safety Evaluation Report] at 17-5, -6) of the Applicant's proposal to require payment of decommissioning costs at the time a cask is accepted for storage rather than before the start of operations improperly grants to the Applicant an exemption to 10 CFR § 72.30(c)(1), without a request by the Applicant and without meeting the standards for exemption under 10 CFR § 72.7 or the standards for rule waiver under 10 CFR 2.758.

[State] Request for Admission of Late-Filed Bases for Utah Contention S (Jan. 26, 2000) at 3 [hereinafter State Motion]. As is apparent from these issue statements, the genesis of these concerns is the staff's December 15, 1999

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<sup>1</sup> This contention represented consolidated portions of contentions Utah S and Castle Rock 7. See LBP-98-17, 47 NRC at 196-97, 214-15. Upon the later withdrawal of sponsoring intervenors Castle Rock Land and Livestock, L.C., and Skull Valley Co., Ltd., the Board removed the reference to Castle Rock 7 from the contention's designation, although its substance remained unchanged. See LBP-99-6, 49 NRC 114, 121 (1999).

Safety Evaluation Report (SER) for the site-related aspects of the PFS ISFSI licensing proposal. There, the staff provided the following discussion regarding the PFS plan for storage cask decommissioning costs (as opposed to facility decommissioning costs):

The estimated decommissioning cost for each storage cask is \$17,000, which will be prepaid into an externalized escrow account under the Service Agreement with each Customer prior to shipment of each spent fuel canister to the Facility. PFS plans to place the full amount estimated for decommissioning the casks in a segregated escrow account for this purpose. The staff notes that PFS'[s] proposal to secure payment prior to shipment of the cask to the Facility constitutes a departure from the language in 10 CFR 72.30(c)(1), which indicates that if an applicant selects prepayment as the method of decommissioning funding, payment should be made "prior to the start of operation." Notwithstanding this difference, however, the PFS proposal assures that (a) reasonable assurance of adequate funding to decommission the Facility will be provided prior to the commencement of operations . . . , as required in 10 CFR 72.30(c); and (b) funding to decommission the casks will be provided prior to construction of each cask (i.e., prior to commencement of any operations involving that cask), thus assuring each cask that is constructed will be decommissioned. Accordingly, PFS'[s] decommissioning funding plan provides reasonable assurance that decontamination and decommissioning at the end of Facility operations will provide adequate protection of the public health and safety and satisfies 10 CFR 72.30(c). Although funding for decommissioning the casks will be provided prior to cask

construction rather than prior to the commencement of Facility operations, since the decommissioning funding plan provides reasonable assurance of adequate funding, an exemption from strict compliance with the language in 72.30(c)(1) would be issued as part of the license, if necessary, to authorize implementation of the PFS plan.

[SER] of the Site-Related Aspects of the [PFSF ISFSI] at 17-5 to -6 (Dec. 15, 1999, as revised Jan. 4, 2000).

In its motion, the State first declares that both its issues are admissible under the five late-filing criteria in section 2.714(a)(1). Relative to the first and most important factor -- good cause for late filing -- the State maintains that, notwithstanding the December 15 issuance of the SER, it has met the Board's earlier directive to submit late-filed issues within thirty days of SER issuance because it did not receive the fifteen-day advance notice requested by the Board and did not actually receive a copy of the SER until December 27, 1999. Additionally, it contends the other four factors weigh in its favor. See id. at 6-8.

Relative to the admissibility of its new issues under section 2.714(b), (d), the State argues that its concerns are admissible because they challenge the legal and factual basis for the PFS and staff positions that the PFS proposal to prepay cask decommissioning costs at the time a cask is accepted is appropriate under the directive in section 72.30(c)(1) that such costs must be paid "prior to

the start of operation." According to the State, the PFS proposal is inconsistent with this regulatory requirement, and the staff's SER proposal to grant PFS an exemption from this requirement violates agency rules. Relative to the latter item, the State declares the staff cannot grant PFS an exemption without a PFS request for such action and without meeting the exemption standards of section 2.758 or section 72.7. Moreover, the State asserts that even if it were appropriate to grant an exemption to section 72.30(c)(1) in some instances, that is not the case here because (1) the cost per cask is based on a "best case" scenario; (2) decommissioning costs are subject to escalation over time, for which PFS has made no provision; and (3) PFS will not have the benefit of the time-value of the money it otherwise would receive if it required payment at the time facility operation begins, making decommissioning funds received later in the facility's life inadequate. See id. at 3-6.

In response, PFS declares that both the State's late-filed issues are unjustifiably late because, notwithstanding the fact that the PFS June 1997 application fully described the PFS proposal to fund spent fuel cask decommissioning prior to the time each cask was accepted, the State made no mention of any concern about this plan in its original contention. According to PFS, the State's

issues are nothing more than an impermissible attempt to gain admission of a contention based on the adequacy of the staff's application review. Additionally, PFS argues that none of the other four section 2.714(a)(1) factors support admission of its two new issues. See [PFS] Response to [State] Request for Admission of Late-Filed Bases for Utah Contention S (Feb. 9, 2000) at 2-4 [hereinafter PFS Response].

In connection with the admissibility of the issues under the section 2.714(b), (d) factors, PFS asserts they should not be accepted because they (1) fail to demonstrate a genuine dispute with PFS on a material issue of fact or law; and (2) would be of no consequence to the proceeding, even if proven, because they entitle the State to no relief. According to PFS, the State's reading of the term "operation" in section 72.30(c)(1) would lead to an absurd result, given that the facility will operate over a twenty-year period. PFS maintains that to accept the State's reading would require that (1) PFS escrow funds for the first and last casks at the same time, even though the last cask will not even be in existence, much less in need of decommissioning, at that time; and (2) put money in escrow for casks that may never exist, given that there is no commitment on the part of PFS or its customers to utilize the entire 4000 cask capacity of the facility. Instead, PFS

argues the appropriate reading of the term "operation" is operation of the spent fuel storage cask, rather than overall facility operation. See id. at 6-7.

Also inadequate to support contention admission, PFS suggests, are the State's allegations about the accuracy of the PFS cask decommissioning cost estimates and the cost escalation potential. Not only are these claims unsupported by adequate basis material because they do not comply with the requirement to show that any decommissioning plan deficiency "'has some independent health and safety significance,'" id. at 7-8 (quoting Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 256 (1996)), but they ignore the PFS decommissioning plan, which states that the escrow amount will be reviewed and adjusted annually for inflation and changes in decommissioning scope or costs. Indeed, PFS declares, no exemption or waiver is needed because the PFS plan complies with section 72.30(c)(1) as written. See id. at 7-9.

Finally, PFS argues that the State's new issues would not entitle the State to any relief because PFS is entitled to an exemption in that its cask decommissioning funding proposal clearly provides adequate public health and safety protection. Indeed, PFS asserts, under 10 C.F.R. § 72.7, the agency is entitled to grant an exemption without an

applicant request, as the staff has proposed be done in this instance. See id. at 9-10.

For its part, the staff declares that, in light of the June 1997 PFS application, item twelve fails to meet the good cause factor, while item thirteen does not run afoul of that precept. The latter is so, the staff argues, because the State could not reasonably have known prior to the staff's SER that the staff would consider granting an exemption, if necessary, insofar as the PFS cask decommissioning funding plan departs from the requirements of section 72.30(c). The staff further concludes that a balancing of the other four factors does not outweigh the lack of good cause for admission of issue twelve. See NRC Staff's Response to "State of Utah's Request for Admission of Late-Filed Bases for Utah Contention S" (Feb. 9, 2000) at 3-6 & n.3 [hereinafter Staff Response].

Regarding the section 2.714(b), (d) standards for admissibility, the staff finds that item twelve provides no genuine dispute and would be of no consequence because the staff issuance of an exemption would eliminate the basis for this issue and any challenge to the staff's proposed acceptance of the PFS funding plan is an impermissible attack on the adequacy of the staff's application review. So too, the staff declares, item thirteen should be dismissed as an impermissible attack on the agency's

regulations and for failing to show a genuine dispute exists with PFS on a material legal or factual issue. This State concern, the staff maintains, directly challenges the provision in section 72.7 that permits sua sponte agency waiver grants. Moreover, the staff portrays the State's concerns about the adequacy of the PFS prepayment plan as vague, speculative, and unsupported and as ignoring the provision in the PFS plan that allows for annual adjustments in per canister decommissioning costs. See id. at 6-10.

With the Board's permission, the State also filed a reply to the PFS and staff responses. The State declares in connection with the section 2.714(b), (d) issue admissibility question that (1) the reference to "operation" in section 72.30(c)(1) should be given its logical meaning, which covers the full range of PFS activities, not just the acceptance of a single cask; (2) the absurd result complained of by PFS is merely its expression of dislike for the regulatory requirement and does not recognize that PFS chose to structure its application to permit the storage of 4000 casks; (3) PFS chose the prepayment option under section 72.30(c)(1), rather than the available surety/insurance or sinking fund methods in section 72.30(c)(2)-(3), and must accept the consequences of that choice; (4) the Commission's Yankee Rowe decision requiring a decommissioning funding allegation to

demonstrate some "independent health and safety significance" is not applicable here because, unlike Yankee Rowe, the adequacy of decommissioning funding is in serious doubt in that it is unclear PFS customers will be able to augment their initial decommissioning payments; (5) in light of the staff's failure to commit to entering an exemption, new issue twelve continues to have an adequate basis; and (6) notwithstanding the fact it may be appropriate for the State at some point to lodge a protest over the exemption with the Commission, it also is appropriate for the State to pursue this matter before the Licensing Board to ensure administrative remedies are exhausted. See [State] Reply to [PFS] and NRC Staff's Responses to Late-Filed Bases for Utah Contention S (Feb. 16, 2000) at 1-8 [hereinafter State Reply].

Finally, regarding the question of meeting the late-filing factors in section 2.714(a)(1), the State asserts its timeliness for both issues is based on the staff SER. According to the State, it had no reason to suppose the staff would acknowledge the inconsistency of the license application with the regulations, yet proceed to approve that inconsistent action. Additionally, the State declares that the other four late-filing factors favor admitting the contention. See id. at 8-10.

## II. ANALYSIS

As we have noted previously, the admission of a late-filed issue, such as the additional matters the State now seeks to add relative to contention Utah S, is governed by the five-factor test set forth in 10 C.F.R. § 2.714(a)(1). In seeking admission, the burden of proof is on the petitioner, who must affirmatively address all five factors and demonstrate that, on balance, they warrant overlooking the lateness of the filing. Yet, even if a late-filed contention meets the requirements of section 2.714(a)(1), it also must satisfy the admissibility standards set forth in section 2.714(b)(2)(i)-(iii), (d)(2), in order to receive merits consideration. See, e.g., LBP-99-43, 50 NRC 306, 312 (1999), petition for interlocutory review denied, CLI-00-02, 51 NRC \_\_ (Mar. 2, 2000).

### A. Issue 12

Notwithstanding the State's attempt to link this issue to the staff's December 15, 1999 SER, it is apparent the storage cask decommissioning funding plan question at the heart of this matter was raised in the June 1997 PFS application. There PFS declared:

The service agreement with each customer (reactor) shall require at least \$17,000 to be deposited into an externalized escrow account prior to shipment of each spent fuel canister to the [PFS facility

(PFSF)]. The full amount of potential decommissioning costs will thus be collected in a segregated account prior to the receipt of each spent fuel canister at the PFSF. This method of funding provides for prepayment of the storage cask decommissioning costs prior to any potential exposure of the storage cask to radiation or radioactive material, and therefore prior to the need for any decommissioning. This funding method complies with the requirements of 10 CFR 72.30(c)(1).

[PFS], License Application [PFSF] app. B at 5-1 (rev. 0 July 1997). As a consequence, the submission of this issue now, more than two years after the November 1997 deadline for filing contentions based on that application, lacks good cause for late-filing.<sup>2</sup>

When this first and most important element of section 2.714(a)(1) is absent, there must be a compelling showing concerning the other four late-filing factors so as to outweigh the lack of good cause. Moreover, in analyzing

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<sup>2</sup> Although the staff appears to "waffle" somewhat on whether it, in fact, disagrees with the PFS reading of the section 72.30(c)(1) term "operation" as authorizing the PFS proposed payment plan, see SER at 17-6 (exemption will be issued, "if necessary"), to the extent the staff's SER statement reflects a disagreement with the applicant's interpretation, issue twelve nonetheless lacks the requisite good cause. As is noted above, the question of how section 72.30(c)(1) should be interpreted clearly was raised in the application. Consequently, the staff's later SER endorsement or nonendorsement of that viewpoint is irrelevant to that issue's timeliness because it does not have the effect of "restarting" the filing clock. Compare Curators of the University of Missouri (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395-96 (1995) (challenge to staff review adequacy is not basis for litigable contention).

the other four factors, factors two and four -- availability of other means to protect the petitioner's interest and extent of representation of petitioner's interest -- are to be given less weight than factors three and five -- assistance in developing a sound record and broadening the issues/delaying the proceeding. See Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244-45 (1986).

Factors two and four do weigh in favor of the State. There apparently is no other means available to the State to raise this legal question of the proper construction of section 72.30(c)(1) or any other party to represent the State's interests relative to this matter. Concerning factor three, although the proffered affidavit by the State's supporting witness Michael F. Sheehan, Ph.D., is short on the details of his supporting testimony, what otherwise could be a significant deficiency is of less moment for this legal issue. See LBP-99-7, 49 NRC 124, 128-29 (1999). And with regard to factor five, the State declares its admission will not cause an "overall" delay in this proceeding. State Motion at 8. Yet, with discovery on contention Utah S closed and this issue scheduled to go to hearing in June of this year, this blanket avowal does not address the question of whether admission of this issue will delay that long-scheduled

evidentiary presentation and so effect the long-term schedule as well.

In summary, although section 2.714(a)(1) factors two and four, and to a lesser extent factor three, support the admission of this issue, a balancing of these elements with factor five, which apparently does not support admission of this issue, does not provide the compelling showing necessary to surmount the lack of good cause under factor one. As a consequence, this issue cannot be admitted.<sup>3</sup>

B. Issue 13

In contrast to issue 12, we find there was good cause for the late filing of this matter. This concern raises a direct challenge to the adequacy of the staff's action in the SER in indicating that, "if necessary," an exemption from section 72.30(c)(1) permitting the PFS cask decommissioning funding plan would be appropriate. Given the timing of the staff's announcement and distribution of the SER, the State complied with the thirty-day time frame we previously established as governing timely filing for SER-related late-filed contentions. See Licensing Board Memorandum and Order (General Schedule for Proceeding and Associated Guidance) (June 29, 1998) at 4-5 (unpublished).

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<sup>3</sup> Our ruling on the late-filing criteria means we need not reach the question of this issue's admissibility under the section 2.714(b), (d) criteria. Based on our review of the parties' filings, however, we would have admitted this item as presenting a cognizable legal issue.

As to the other four factors, once again criteria two and four weigh in favor of the State, given there apparently is no other comparable means available to the State to raise this legal question of the proper construction of section 72.30(c)(1) or any other party that will represent the State's interests relative to this matter. Concerning factor three, the lack of details in the proffered affidavit by the State's supporting witness Michael F. Sheehan, Ph.D., is a more troublesome omission here because the challenge to the staff's action mounted by this issue is based, in part, on purported factual difficulties with the staff's analysis, including the staff's acceptance of a PFS "best case" scenario that does not adequately analyze decommissioning costs and its failure to account for the impact of the loss of the time-value of money. And again, with regard to factor five, the State's conclusory declaration that admission of this issue will not cause an "overall" delay in this proceeding does not address the question of whether admission will delay the June 2000 evidentiary presentation on contention Utah S, with potential effects on the long-term schedule as well.

Nonetheless, despite the fact that factors three and five tilt against late-filed admission of this issue, the combined weight of elements one, two, and four on the admissibility side of the balance is sufficient to find the

section 2.714(a)(1) factors support late-filed admission of this issue, subject to any finding regarding the admissibility factors set forth in section 2.714(b), (d).

In this regard, we conclude the admission of this issue involves three separate considerations. The first concerns that portion of the issue statement challenging the staff's SER as it suggests an exemption would be appropriate without a PFS request. As PFS and the staff point out, the provision in 10 C.F.R. Part 72 that outlines the procedure for granting exemptions from the requirements of that part indicates that exemption requests can be granted by the agency "upon its own initiative."<sup>4</sup> 10 C.F.R. § 72.7. Accordingly, this portion of the issue is not admissible because it seeks to challenge an applicable agency rule. See LBP-98-7, 47 NRC at 179.

The second aspect of this issue is its assertion that 10 C.F.R. § 2.758(b), the 10 C.F.R. Part 2 provision that governs how adjudicatory party requests for regulatory exemptions are to be handled, governs the staff's SER exemption statement. In reviewing a similar claim in this

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<sup>4</sup> Although the staff apparently does have the delegated authority to grant exemptions relative to the provisions of Part 72, see NRC Manual Chapter 0124-0311 (Oct. 27, 1989) (now NRC Management Directive 9.26), as the staff suggests in its SER, in this instance the exemption seemingly would be granted by the Commission as part of the ultimate decision on licensing the PFS facility. See Staff Response at 8 n.9; see also 10 C.F.R. § 72.46(d).

proceeding regarding a pending PFS exemption request from the Part 72 seismic design criteria, we noted that "prior adjudicatory rulings suggest that section 2.758 need not be invoked unless (1) the exemption request is directly related to a pending contention, or (2) the interpretation or application of a regulation to specific facts is questioned." LBP-99-21, 49 NRC 431, 436 (1999) (citations omitted). In that instance, we found section 2.758 was not applicable because the exemption request was not directly related to the admitted seismic issue -- contention Utah L, Geotechnical -- and did not question any regulatory interpretation or the application of a regulation to the specific facts implicated in an admitted contention. So too, the exemption in question here does not directly relate to contention Utah S as admitted or raise any questions regarding a regulatory interpretation or the application of a regulatory provision to the specific facts implicated in admitted contention Utah S. As a consequence, the portion of this issue statement that seeks to implicate section 2.758 as a basis for contesting the staff's action likewise is inadmissible.

This leaves the portion of this issue that seeks to challenge the adequacy of the staff's apparent endorsement of an exemption from section 72.30(c)(1) for the PFS storage cask decommissioning funding plan to permit fee collection

prior to the time each individual spent fuel canister is shipped to the facility, rather than to set aside funds when facility operation begins to cover decommissioning for the planned 4,000 cask capacity of the facility. Again, in LBP-99-21, 49 NRC at 438, relative to a similar claim regarding contention Utah L, we noted that "[t]he Commission has made it clear that, in the absence of a contrary Commission directive, exemption requests falling outside the ambit of section 2.758 are not subject to challenge in an adjudicatory proceeding," leaving question certification and/or a referred ruling under 10 C.F.R.

§§ 2.718(i), 2.730(f), as the only avenues by which the Board could consider an exemption issue, albeit after receiving Commission permission.

There, we declined to take any certification/referral action on the late issue on the ground that, because the exemption request was still pending with the staff, it was not sufficiently concrete to merit current Commission consideration. In this instance, there is the strong suggestion in the SER that the staff is favorably inclined toward the grant of an exemption, albeit sua sponte, thus presenting us with the question we did not reach in the prior case. Confronting it here, we conclude that such an endeavor would not be worthwhile. As the State itself observes, "it may be appropriate for it to lodge its dispute

with the Staff's proposed exemption with the Commission, in which authority to issue exemptions resides." State Reply at 7 (citation omitted). Indeed, the State's action here appears to be footed in its belief "that it is appropriate to begin with the Licensing Board, in order to ensure that all necessary administrative measures are exhausted." Id. Given the State's stance in this regard, and our concern that this particular issue does not meet the threshold for a certified question/referred ruling, compare LBP-00-06, 51 NRC \_\_, \_\_ (slip op. at 70-72) (Mar. 10, 2000); see also CLI-00-02, 51 NRC at \_\_ (slip op. at 3-4), we find that the proper disposition is to dismiss this issue as not appropriate for litigation in this proceeding, thereby leaving the State free to pursue whatever alternative regulatory avenues it believes are apropos.

### III. CONCLUSION

Relative to State's January 26, 2000 request for late-filed admission of contention Utah S issues twelve and thirteen concerning the funding submission timing for the estimated costs of decommissioning the individual storage casks that will be stored at the proposed PFS ISFSI, the Board concludes that (1) issue twelve must be dismissed for failing to merit admission under the five-factor balancing test of section 2.714(a)(1), principally because there is no

good cause for its late-filing; and (2) despite the fact its late-filed status is not a bar to its further consideration, issue thirteen nonetheless is not admissible under the contention acceptance standards of section 2.714(b), (d).<sup>5</sup>

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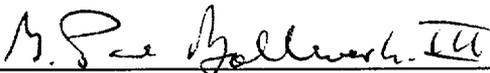
For the foregoing reasons, it is this twenty-first day of March 2000, ORDERED, that the State's January 26, 2000

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<sup>5</sup> Although the State's February 16, 2000 reply filing is marked to indicate it may contain proprietary information, principally on the basis of two attached exhibits that bear PFS confidentiality designations, see State Reply exhs. 2-3, we need not afford this decision protected status because we have not made reference to any of the potential proprietary material identified by the State.

request for admission of late-filed bases for contention  
Utah S is denied.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>

  
\_\_\_\_\_  
G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

  
\_\_\_\_\_  
Dr. Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
\_\_\_\_\_  
Dr. Peter S. Lam  
ADMINISTRATIVE JUDGE

This memorandum and order is issued pursuant to the  
authority of the Atomic Safety and Licensing Board  
designated for this proceeding.

Rockville, Maryland

March 21, 2000

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<sup>6</sup> Copies of this memorandum and order were sent this  
date by Internet e-mail transmission to counsel for (1)  
applicant PFS; (2) intervenors Skull Valley Band of Goshute  
Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the  
Goshute Reservation, Southern Utah Wilderness Alliance, and  
the State; and (3) the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
PRIVATE FUEL STORAGE, L.L.C. ) Docket No. 72-22-ISFSI  
 )  
(Independent Spent Fuel Storage )  
Installation) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING REQUEST FOR ADMISSION OF LATE-FILED BASES FOR CONTENTION UTAH S) (LBP-00-08) have been served upon the following persons by deposit in the U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No. 72-22-ISFSI  
LB MEMORANDUM AND ORDER  
(DENYING REQUEST FOR ADMISSION  
OF LATE-FILED BASES FOR CONTENTION  
UTAH S) (LBP-00-08)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 21<sup>st</sup> day of March 2000